

1 MR. SCHMIDT: This may be a good
2 time for a lunch break.

3 JUDGE SIPPEL: Okay. Go ahead.

4 MR. SCHMIDT: I was just going to
5 say, this may be a good time for a lunch
6 break.

7 JUDGE SIPPEL: How much longer do
8 you have to go?

9 MR. SCHMIDT: I'm probably half
10 way through.

11 JUDGE SIPPEL: Half way through
12 your cross examination --

13 MR. SCHMIDT: Yes.

14 JUDGE SIPPEL: -- of this witness?

15 MR. SCHMIDT: Believe it or not,
16 yes.

17 JUDGE SIPPEL: All right. That's
18 fair and honest.

19 Anybody have any objection of
20 breaking now?

21 THE WITNESS: If I have a say in
22 this, I'd prefer to just go right through it.

1 I got a schedule to keep here, and if we could
2 do it and get it over with, I would appreciate
3 it. If that's not the general consensus or
4 your preference, Your Honor, then we'll take
5 lunch.

6 MR. SCHMIDT: I will accommodate
7 the witness on that.

8 JUDGE SIPPEL: So how long is he
9 going to be on the stand after this; from here
10 until when?

11 MR. SCHMIDT: My guess is an hour.

12 JUDGE SIPPEL: One more hour?

13 MR. SCHMIDT: Yes. That's my best
14 guess, but I've already proven to Your Honor
15 that I'm very bad at those estimates.

16 JUDGE SIPPEL: Well, okay. From
17 one to two hours?

18 MR. SCHMIDT: Yes, definitely
19 that. Yes.

20 JUDGE SIPPEL: Okay. Can you hang
21 in there?

22 THE WITNESS: I'm good if you say.

1 As I say, it's my preference but if it's not
2 yours, then we'll --

3 JUDGE SIPPEL: No, I'm fine.

4 THE WITNESS: Good.

5 JUDGE SIPPEL: We need to air?
6 With the door open, I'm reasonably comfortable
7 and without it, you know my jacket off.

8 Well, is there a strong feeling
9 one way or the other?

10 MR. SCHMIDT: I'm kind of hungry,
11 but I'll defer to the witness and the group.

12 JUDGE SIPPEL: That's okay. We're
13 going to go. We're going to great.

14 THE WITNESS: Good great.

15 JUDGE SIPPEL: Are you okay, Mr.
16 Reporter.

17 COURT REPORTER: Good.

18 JUDGE SIPPEL: Okay. Let's go.

19 BY MR. SCHMIDT:

20 Q You read Mr. Brooks' testimony,
21 correct?

22 A His oral testimony?

1 Q Yes.

2 A I read his written testimony, did
3 not read his oral testimony.

4 Q You didn't read his oral
5 testimony?

6 A No, I did not.

7 Q Okay. But you did read his read
8 his written direct?

9 A Yes.

10 Q Okay. And you understand his
11 background in the ratings industry?

12 A I do.

13 Q You wouldn't claim to have that
14 same experience?

15 A I -- I would not.

16 Q Is your position that Tennis is
17 just fundamentally different then what Versus
18 carries and what Golf carries?

19 A Yes. You left a couple of words
20 out there, and I'm going to say to you that
21 it's my position that the Tennis Channel's
22 programming is fundamentally different than

1 the programming on Golf and Versus.

2 Q And Tennis Channel's programming,
3 the most important programming is live tennis,
4 right?

5 A On Tennis Channel?

6 Q Yes, sir.

7 A I think that's probably right.

8 Q Are you aware of the ongoing
9 efforts that Versus has made to get tennis
10 programming through Versus dating back several
11 years?

12 A I really -- I didn't study that.
13 I'd been shown a couple of emails or whatever
14 that it seemed to pertain -- originate and be
15 communication between Tennis' management and
16 the programming side -- programming network
17 side of Comcast, not the cable company, the
18 distributor. So, there really wasn't anything
19 I factored into what I was doing.

20 Q Okay. Let me show you very
21 quickly some of those documents to see if
22 they're the ones you've seen.

1 MR. SCHMIDT: May I approach, Your
2 Honor?

3 JUDGE SIPPEL: Please.

4 MR. SCHMIDT: This is Tennis
5 Channel Exhibit 35, which is in evidence.

6 JUDGE SIPPEL: Thank you.

7 MR. SCHMIDT: Thank you, Your
8 Honor.

9 THE WITNESS: Thank you.

10 MR. SCHMIDT:

11 Q Is that one of the documents that
12 you saw, Mr. Egan?

13 A Give me a second just to finish
14 reading it.

15 Q Sure. Of course.

16 A Okay. I have not seen this
17 document.

18 Q Okay. Well let me -- I'll be very
19 quick with it then. Do you know who Steve
20 Burke is?

21 A I do.

22 Q He's the head of -- he was the

1 President of both -- of the combined entity,
2 the cable side and the programming side?

3 A That's my understanding, yes.

4 Q And Jeff Shell is the President of
5 the programming side?

6 A I think was, yes.

7 Q Was? Fair enough.

8 And he writes in this email, he
9 talks about an equity -- strike that. Let me
10 orient this a little better.

11 The email at the bottom is dated
12 January 2, 2007 at 9:49, do you see that?

13 A At the bottom?

14 Q Yes, the second of the two?

15 A I'm not -- what's -- what's the
16 date?

17 Q It's Mr. Shell's email to Mr. --

18 A Oh, I'm sorry. I'm looking at the
19 stamp on here. Yes, I see the date on it.

20 Q Okay. He makes a reference to
21 Comcast evaluating and rejecting an offer of
22 equity from Tennis Channel. I'm not going to

1 ask you about that, but that's just context.
2 He says "You may have recently that the USTA
3 just made an investment in the Tennis Channel.
4 I found this interesting for two reasons:

5 (1) The USTA investment probably
6 increases the chances that the channel will
7 survive;

8 (2) The one tent pole event that
9 makes the most sense for Versus is the U.S.
10 Open."

11 Is that expression you've heard in
12 the industry, "a tent pole event"?

13 A I have heard that, yes.

14 Q That's an event that holds the
15 tent up that forms the foundation for a
16 channel, right?

17 A Correct.

18 Q And they're referring to the U.S.
19 Open as a potential such event for Versus,
20 right?

21 A Their referring to the U.S. Open
22 could -- let me say it differently.

1 They're saying the one event that
2 makes the most sense for Versus is the U.S.
3 Open, and he's labeling that event as a tent
4 pole event.

5 Q For Versus?

6 A Well, I don't know if he's saying
7 that it it's a -- it would be a tent pole
8 event on Versus. He's saying he's a tent pole
9 event and it makes sense for Versus.

10 Q Okay. And Mr. Burke's response to
11 that is "I think this is an interesting idea"?

12 A Right.

13 Q And just for completeness, the
14 idea is at the bottom of Mr. Shell's email he
15 says "I wonder whether it might make sense to
16 reevaluate a scenario where we would give
17 distribution to the Tennis Channel in exchange
18 for equity in U.S. Open rights for Versus."
19 Did I read that correctly?

20 A Yes.

21 Q Have you had experience with
22 vertically integrated cable companies?

1 A Yes.

2 Q In your experience is it common
3 for the head of programming to be involved in
4 making distribution decisions regarding
5 competitor changes or distribution decisions?

6 A I really -- I really can't say. I
7 -- I -- I don't really have any knowledge of
8 that, so -- you know, I just can't say.

9 Q Well, have you ever seen that in
10 your experience? Have you ever seen someone
11 on the programming side saying we should give
12 a competitor distribution -- our cable arm
13 should the competitor distribution in exchange
14 for us getting programming rights? Have you
15 ever seen that?

16 A I've not -- I've not had any
17 direct knowledge of that, no.

18 Q Okay. Let's look at one more.
19 Yes.

20 By the way, do you disagree with
21 Mr. Shell that the U.S. Open is a tent pole
22 event?

1 A No.

2 MR. SCHMIDT: May I approach, Your
3 Honor?

4 JUDGE SIPPEL: Please do.

5 MR. SCHMIDT: Exhibit 40 is
6 already in evidence.

7 MR. SCHMIDT:

8 Q And I'll ask you the same question
9 as the last time, is one of the documents you
10 had a chance to look at?

11 A Let me read it.

12 Q Take your time, of course.

13 A Okay. I think I have a general
14 sense of what it is.

15 Q Okay. This is a document that on
16 the first page discusses -- indicates that
17 it's discussing Versus' acquisition analysis
18 for the U.S. Open in July of 2007, correct?

19 A Correct.

20 Q Let's flip ahead to the third
21 page, which is --

22 JUDGE SIPPEL: I'm sorry. Is it

1 Shell Exhibit 5, this is a deposition
2 document?

3 MR. SCHMIDT: Exactly, Your Honor.

4 JUDGE SIPPEL: And that was on
5 March 2011.

6 And you identify Mr. Shell as
7 being a Comcast -- is he a distributor or
8 programmer?

9 MR. SCHMIDT: Programmer. He's
10 the former head of programming.

11 JUDGE SIPPEL: Right.

12 MR. SCHMIDT: Yes, sir.

13 JUDGE SIPPEL: Okay.

14 MR. SCHMIDT:

15 Q So, let's look, Mr. Egan, at the
16 third page of this document, the executive
17 summary where it talks about the strengths and
18 opportunities of getting the U.S. Open on
19 Versus and the weaknesses and threats, do you
20 see that?

21 A I do.

22 Q Under the strength and

1 opportunities, it calls "The U.S. Open a
2 premier event in the sports landscape," did I
3 read that correctly?

4 A Yes.

5 Q Do you agree with that assessment
6 of the U.S. Open?

7 A Yes. Yes.

8 Q A couple of bullets down it says
9 that "getting the U.S. Open would add to
10 Versus' credibility in sports," did I read
11 that correctly?

12 A Yes.

13 Q Do you agree with that?

14 A Yes.

15 Q Let's look at page 4. On page 4
16 of this document at the top it talks about how
17 the U.S. Open is a strategic fit for Versus,
18 do you see that?

19 A Yes.

20 Q And the first bullet is timing on
21 the calendar. And the second bullet under
22 there says: "With similar key audience

1 demographics the U.S. Open will be heavily
2 promoted during the TDF." That's the Tour de
3 France, right?

4 A Oh, I don't know, but I'll take
5 your word for it.

6 Q Do you know of any other sports
7 event on Versus that would --

8 A No, no.

9 Q Okay. Do you agree that the U.S.
10 Open has similar key audience demographics to
11 the Tour de France?

12 A I -- I really don't know.

13 Q By the way, the Tour de France is
14 not a violent game the way you were discussing
15 some of the other events on Versus, correct?

16 A That -- that would be correct,
17 yes.

18 Q And you said earlier it's one of
19 the most important? You'd be in trouble
20 figuring out where it ranked, but it's one of
21 the more important programs on Versus?

22 A I think so.

1 Q You know -- well, strike that.

2 Are you aware that Versus has been
3 moving away from some of the hunting and
4 fishing programming you were talking about
5 earlier, and in fact that's the reason it
6 changed its name from Outdoor Life Network to
7 Versus in 2000 -- I'm going to get the date
8 wrong. Around 2006/2007?

9 A Am I aware of that?

10 Q Yes.

11 A No.

12 Q You didn't know that?

13 A I -- I don't know if it's true. I
14 don't know. I'm not aware of it.

15 Q Going back to Exhibit 40, Tennis
16 Channel Exhibit 40, same page, page 4 the next
17 bullet says "After adding the NHL, WEC and
18 high profile college football games." Those
19 are programs Versus already has at this time,
20 right?

21 A Yes.

22 Q "The U.S. Open will represent

1 another major programming acquisition." Do
2 you agree with that description of the U.S.
3 Open?

4 A Yes.

5 Q Down near the bottom it says
6 "Overall Rating Lift for Versus." And it says
7 "With projected daytime ratings increasing by
8 six times and projected prime time ratings
9 increasing by almost three times, the overall
10 ratings of the network would improve." Do you
11 have any reason to disagree with this
12 statement that there would be an overall
13 rating lift for Versus if it acquired the U.S.
14 Open?

15 A You know, I really can't say. I
16 don't know what rights for the U.S. Open are
17 being discussed here. As you're well aware,
18 there's broadcast rights, there's ESPN2
19 rights, there's Tennis Channel rights, there's
20 internet rights. There's all sorts of rights.

21 I don't know what's on Versus
22 that's being replaced, so I can't -- I can't

1 say that I could agree with your statement. I
2 don't know.

3 Q Well, my question is a little
4 different, and then i think I can help you on
5 the rights. But before we get there, do you --
6 well, let's go to the rights.

7 If you look at page 7 of the
8 document, on page 7 of our document it lays
9 out the deal programming strategy.

10 A Page 7?

11 Q Yes, sir.

12 JUDGE SIPPEL: Seven of Tennis 40,
13 right?

14 MR. SCHMIDT: Yes, sir. Yes, Your
15 Honor.

16 MR. SCHMIDT:

17 Q And it says "Applied exclusive
18 cable rights formerly held by USA," do you see
19 that?

20 A Yes.

21 Q So does that answer your question
22 about which rights they were looking to get?

1 They were looking to get the cable rights
2 formerly held by USA.

3 A Yes.

4 Q And those are the rights that
5 Tennis Channel ultimately acquired, correct?

6 A Well, I'm a little uncertain on
7 that. Perhaps you can help me. This ESPN had
8 some of the rights, some of those games that
9 were formally USA Network.

10 Q Do you know the answer to that?

11 A No. No, I don't, that's what I was
12 asking you.

13 Q Okay. Let me show you another
14 document.

15 JUDGE SIPPEL: Before you pass off
16 this one, I want to just ask you an
17 identification question.

18 On the previous page you testified
19 on, yes, pages 4, 5 under the second series of
20 bullets, what is WEC? We talk about that a
21 lot.

22 THE WITNESS: That's the

1 cagefighting.

2 JUDGE SIPPEL: Oh, of course.

3 Okay.

4 MR. SCHMIDT:

5 Q And actually, you might want to
6 keep that in front of you, because I may come
7 back to it. But I want to just see if I can
8 answer your question about the rights.

9 MR. SCHMIDT: May I approach, Your
10 Honor?

11 JUDGE SIPPEL: Please.

12 MR. SCHMIDT: I'm approaching with
13 Tennis Channel Exhibit 49.

14 MR. SCHMIDT:

15 Q By the way, have you seen Exhibit
16 40 before?

17 A That's this one?

18 Q Yes.

19 A No.

20 Q Okay. It's not something you
21 considered in rendering your opinion?

22 A No.

1 JUDGE SIPPEL: Did I get one?

2 MR. SCHMIDT: I sure hope so.

3 JUDGE SIPPEL: I have so many
4 things here.

5 Tennis Channel Exhibit 49. And
6 this one is in evidence?

7 MR. SCHMIDT: This one is in
8 evidence, Your Honor.

9 JUDGE SIPPEL: Thank you very
10 much.

11 MR. SCHMIDT:

12 Q And the only thing I'd like to
13 show you on this page, tell me when you've had
14 a chance to take a look at it. I want you to
15 have a chance to look at it.

16 A Okay.

17 MR. SCHMIDT: Your Honor, this is
18 in evidence subject to the concerns about the
19 role of the newspaper article.

20 JUDGE SIPPEL: What is the
21 published work?

22 MR. TOSCANO: I can't tell from

1 this Exhibit, Your Honor.

2 JUDGE SIPPEL: Oh, okay. It's
3 staff writers, a Dan Kaplan and John Ourand.

4 MR. SCHMIDT: I think it's
5 SportsBusiness Journal, Your Honor. But I'm
6 just going to ask one question about it when
7 Mr. Egan's ready.

8 THE WITNESS: Okay. I have read
9 this. It was a newspaper article. Quickly,
10 but I read it.

11 BY MR. SCHMIDT:

12 Q Here's my question: If you look
13 right under the headline of the article that
14 Mr. -- I'm not going to try to pronounce his
15 last name -- Mr. Vladic is sending around to
16 Mr. Shell and others, the first sentence says,
17 "Four broadcasters have emerged to bid on the
18 U.S. Open tennis championship's cable rights."
19 Do you see that?

20 A I do.

21 Q And this is around the same time
22 as Exhibit 40, right, just a few months later?

1 A I think so, yes.

2 Q It then says in the last -- I
3 guess it's the third-to-last paragraph of
4 Exhibit 49, "Versus and Tennis Channel look to
5 be the most serious bidders so far." Do you
6 know where the statement -- do you have any
7 reason to disagree with that statement?

8 A I have no opinion on the
9 statement. I'm just reading this report. I
10 read it.

11 Q Okay. Did you look at the
12 competition at all between Versus and Tennis
13 Channel for tennis rights in preparing your
14 testimony?

15 A Again, I didn't, because the
16 competition would be from the programming
17 network side of Comcast, and I was looking at
18 the reasonableness of the actions of the cable
19 distribution side.

20 Q Okay. Just a couple more
21 questions back on Exhibit 40.

22 JUDGE SIPPEL: Where are we going

1 back to?

2 MR. SCHMIDT: Back to Exhibit 40,
3 Your Honor, this slide.

4 JUDGE SIPPEL: All right. Go
5 ahead.

6 BY MR. SCHMIDT:

7 Q This slide says -- and I'd like to
8 finish looking at it by going to page 9 of it.
9 Do you see where it talks about the ad sales
10 outlook for the U.S. Open?

11 A I do.

12 Q And it references upscale demo?

13 A I do.

14 Q And blue chip property?

15 A I do.

16 Q Do you disagree with either of
17 those statements?

18 A Certainly a blue chip property.
19 Upscale demo, I have no knowledge of the
20 demos. I do have knowledge that it's a blue
21 chip property. I don't know upscale demo. So
22 I just don't know.

1 Q And so I understand it, when you
2 say you don't know about upscale demo, do you
3 disagree with that statement, or you just
4 don't know whether it's accurate or not?

5 A I have no opinion. Oh, I don't
6 know whether it's accurate or not.

7 Q Okay. But not that you're saying,
8 "I know that it's wrong"?

9 A Oh, correct, yes.

10 Q Okay.

11 JUDGE SIPPEL: What does that term
12 mean "upscale demo"?

13 BY MR. SCHMIDT:

14 Q Do you have an understanding of
15 that, Mr. Egan?

16 A It means affluent. Affluent.
17 Upscale, affluent.

18 JUDGE SIPPEL: Yes. But how does
19 it tie in with the demo?

20 THE WITNESS: So what they're
21 saying is, for an ad sales outlook to sell
22 advertising --

1 JUDGE SIPPEL: Yes.

2 THE WITNESS: -- that this
3 property, according to this document, will
4 draw affluent viewers. And presumably those
5 are desirable eyeballs to sell to an
6 advertiser.

7 JUDGE SIPPEL: So the -- when you
8 say the "upscale demo," is it this particular
9 program that they are talking about will draw
10 upscale reviewers?

11 THE WITNESS: That's the position.
12 That's -- whoever made this presentation,
13 that's their --

14 JUDGE SIPPEL: Their point.

15 THE WITNESS: -- his or her point
16 of view.

17 JUDGE SIPPEL: Well, the
18 demographics -- is that demographics? Upscale
19 demographics?

20 THE WITNESS: Oh, I'm sorry, yes.
21 Yes, demographics.

22 JUDGE SIPPEL: Thank you.

1 BY MR. SCHMIDT:

2 Q Let's turn to page 10, and then we
3 can put this document to the side. On page
4 10, Versus lists its potential competition for
5 these U.S. Open rights. Do you see that?

6 A I do.

7 Q And one of the potential
8 competitors is Tennis Channel, correct?

9 A Correct.

10 Q And it gives the pros and cons of
11 The Tennis Channel as a competitor. One of
12 The Tennis Channel's pros is that it is a
13 natural fit for the Tennis Network. Did I
14 read that right?

15 A Yes.

16 Q And do you agree with that?

17 A Oh, sure.

18 Q One of the cons is that Tennis
19 Channel has distribution issues. Do you see
20 that?

21 A I do see that, yes.

22 Q And do you agree with that?